

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
FILED
IN CLERKS OFFICE

KEVIN NORRIS,)
Petitioner,) 2006 JUL 31 P 2:09
)
V.) U.S. DISTRICT COURT
) CIVIL ACTION
) DISTRICT OF MASS
STEVEN O'BRIEN,) NO. 05-11353-MLW
respondent,)

AFFIDAVIT OF PETITIONER

I, Kevin Norris, do hereby depose and state as follows:

1. I believe that the DNA testing and Ineffective assistance of counsel issues, should constitute newly discovered evidence, due to the fact that were not developed at the time of my Direct Appeal in 1996, or in 1997, the deadline for filing my habeas corpus petition.

2. I received the DNA testing results in September of 2000, and I received the Affidavit from trial counsel, attesting to his ineffectiveness in October of 2000. (See both documents attached hereto).

3. After receiving the documents, I wrote the Committee for Public counsel services, for assistance with filing a Motion for new trial, and additional testing. After several correspondence to both David Nathanson and Donald Brostein, counsel was assigned for screening. (See their letters to me, attached hereto).

4. I then had attorney Sandra Bloomenthal, review the documents and she decided to represent, after deciding that I had some meritorious issues. (See her letter attached hereto).

5. I believe that this affidavit and documents-exhibits, prove that the evidence was discovered after the 1-year deadline, and the efforts I made to prepare and file a Timely motion for new trial, due to newly discovered evidence.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

Dated: July 23, 2006

Kevin Norris
Kevin Norris

95-11353-MLW

AFFIDAVIT

I, Bruce R. Taub, being duly sworn, do hereby depose and state as follows:

1) I am an attorney in good standing in the Commonwealth of Massachusetts. I represented Kevin Norris in Commonwealth v. Norris, 91SUCR25197-001-009, including trial representation, following which Mr. Norris was convicted of armed robbery and aggravated rape.

2) After reflecting on my representation of Mr. Norris at trial and sentencing, I believe Mr. Norris might have been influenced from my own personal bias and from a desire to testify at sentencing on his behalf and from a more thorough investigation into his background for mitigating factors.

3) I believe Mr. Norris's sentence of 25-40 years to be extremely harsh and excessive, exceeding the old and new sentencing guidelines for someone with no prior convictions.

4) I believe the defendant's unwillingness to plead guilty, the race and class of the victim and of the defendant, and the pressure of the courtroom may have biased the trial judge's perception that a very severe sentence was warranted.

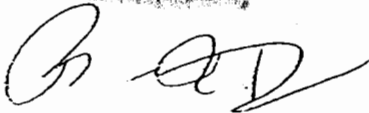
5) In my years of practicing criminal law in the Commonwealth I am unaware of a comparable sentence being given to a defendant with no prior criminal record who was a teenager at the time of his crime.

6) I believe in the interest of justice and fairness Mr. Norris sentence should be revised to reflect a sentence that is appropriate and within the sentencing guidelines.

Signed under the pains and penalties of perjury this
of October 2000.

23rd

day



Bruce R. Taub

CELLMARK
DIAGNOSTICS

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Telephone: (301) 428-4980 (800) USA-LABS

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REPORT OF LABORATORY EXAMINATION

September 11, 2000

Mr. Noah Rosmarin
Adkins, Kelston & Zavez, P.C.
Attorneys At Law
90 Canal Street, 5th Floor
Boston, MA 02114

Re: Cellmark Case No. F001374
Commonwealth v. Norris

EXHIBITS:

Items of evidence were received for analysis on July 26, 2000. Polymerase chain reaction (PCR) testing was performed on the items listed below:

Swab in envelope labelled "...swab of interior condom B"

Cutting in envelope labelled "...Towel stain #1"

Purple top tube of blood labelled "Kevin Norris"

RESULTS:

DNA extracts isolated from the items listed above were tested using the AmpF/STR Profiler Plus™ PCR Amplification Kit. The short tandem repeat (STR) loci tested and the types obtained for each sample are listed in the attached table.

CONCLUSIONS:

Condom B (non-sperm fraction):

The data indicate that DNA from more than one individual may have been obtained from the non-sperm fraction of the condom B. The DNA obtained from this sample contains DNA from a male. The primary DNA profile from this sample matches the DNA profile from the tube of blood labelled Kevin Norris.

Report for Cellmark Case No. F001374
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Condom B (sperm fraction):

The DNA obtained from the sperm fraction of the condom B is from a male. The DNA profile from this sample matches the DNA profile from the tube of blood labelled Kevin Norris.

Using Recommendation 4.1 from the 1996 National Research Council report¹, the approximate frequencies in the Caucasian, African American, and Hispanic populations of the DNA profile common to the sperm fraction of the condom B, the tube of blood labelled Kevin Norris, and the primary DNA profile obtained from the non-sperm fraction of the condom B are as follows:

POPULATION DATABASE	FREQUENCY
Caucasian	1 in 2.5 trillion unrelated individuals
African American	1 in 560 billion unrelated individuals
Hispanic	1 in 40 trillion unrelated individuals

Towel stain (non-sperm fraction):

The DNA obtained from the non-sperm fraction of the towel stain is from a female. Kevin Norris is excluded as the source of the DNA from this sample.

Towel stain (sperm fraction):

The DNA obtained from the sperm fraction of the towel stain is from a male. Kevin Norris is excluded as the source of the DNA from this sample.

Results for Cellmark Case No.: F001374

Date: 9/11/00

Table No.: 1

Page No.: 4

ALLELES DETECTED - PROFILER PLUS

Case	Sample	D3S1358	vWA	FGA	AMEL	D8S1179	D21S11	D18S51	D5S818	D13S317	D7S820
F001374 01E1 P	condom B (NSF)	15	14,17,18	19,23	X,Y+	14	28,29	15,21	13 (11)	11	9,10
F001374 01E2 P	condom B (SF)	15	17,18	19,23	X,Y	14	28	15,21	13	11	9,10
F001374 02E1 P	towel stain (NSF)	15,16	14,16	22,24 (23)	X	13	29,32.2	15,17	11	11	10,12
F001374 02E2 P	towel stain (SF)	15,17	15,16	20,24	X,Y	11,12	28,32.2	16,20	10,11	11,13	10
F001374 03 P	Kevin Norris	15	17,18	19,23	X,Y	14	28	15,21	13	11	9,10

NSF = non-sperm fraction

SF = sperm fraction

+ It may not be possible to determine whether DNA from a female is present when DNA from a male is detected.

The results in parentheses may be due to the presence of DNA from more than one individual or technical artifacts, and therefore were not interpreted.

The results listed in the table above do not depict intensity differences.

In addition to the profiles obtained from the items referenced in this report, weak results were observed. These results may be due to the presence of DNA from more than one individual or to technical artifacts, and therefore were not interpreted.

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EVIDENCE DISPOSITION:

In the absence of specific instructions, evidence will be returned to the submitting agency by Federal Express or other appropriate carrier.

Kathryn Colombo
Kathryn Colombo
Senior DNA Analyst

Lewis O. Maddox
Lewis O. Maddox, Ph.D.
Molecular Geneticist

If expert witnesses are needed for depositions or court testimony, please notify us by telephone at 301-515-6155 at least four weeks in advance.

¹ The National Research Council Committee on DNA Forensic Science (1996) The Evaluation of Forensic DNA Evidence. National Academy Press, Washington, D.C. (see p. 122, using $\theta = 0.03$).



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DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

September 19, 2001

Attorney Bruce R Taub
59 Temple Place, Suite 402
Boston MA 02111

WRITER'S DIRECT DIAL NUMBER

RE: COMMONWEALTH V. KEVIN NORRIS

Dear Attorney Taub,


Mr. Norris, your former client, has contacted the Committee for Public Counsel Services and requested that CPCS assist him in certain post-conviction matters. Mr. Norris provided CPCS with a copy of an affidavit from you. I commend your willingness to provide this affidavit to Mr. Norris.

In the affidavit you recount some failings at sentencing including your failure to interview Mr. Norris' family in order to provide evidence in mitigation. As you know, The defendant must satisfy a two-prong test in order to prevail on a claim of ineffective assistance. The defendant must show: 1) that counsel's conduct fell measurably below the level expected of the ordinary fallible lawyer and 2) that counsel's failing "deprived the defendant of an otherwise available, substantial ground of defence." Commonwealth v. Saferian, 366 Mass. 89, 96 (1974).

Your affidavit appears to satisfy the first prong. However, more information is needed in order to determine whether Mr. Norris can meet the second prong. It would be very helpful if you or Mr. Norris could provide any specific information which could have been provided in sentencing, but was not. Further, could you please advise as to whether Mr. Norris had a sentence appeal and who represented him on the sentence appeal?

Thank you for your assistance.

Sincerely,


David Nathanson, Esq.

cc: Mr. Kevin Norris ✓



The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108

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WRITER'S DIRECT DIAL NUMBER

December 21, 2001

Kevin Norris
12 Administration Road
Bridgewater, MA 02324

Dear Mr. Norris:

I have decided to assign an attorney to screen your case again. The attorney will be assigned for the purpose of reviewing any issues related to your sentencing since those issues were not examined at the time of the previous screening. Specifically, the attorney will determine whether there is any ~~possibility of getting a new sentencing hearing held in your new attorney's office~~ ~~that he could have done more on~~ your behalf at sentencing, your claims relating to statements made at sentencing by the prosecutor, and the later dismissal of the Roxbury case. The screening attorney will also be authorized, but not required, to look at any other claims, including the DNA issue.

I do not want to hold out any false hope since I believe that these claims are difficult ones on which to achieve success. Nonetheless, especially in light of your lengthy sentence, it seems to me that they are worth examining more closely.

Very truly yours,

Donald S. Bronstein
Donald S. Bronstein
Director of Criminal Appeals
Private Counsel Division

BLOOMENTHAL AND BLOOMENTHAL

A PROFESSIONAL ASSOCIATION

- ATTORNEYS AT LAW -

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FAX (508) 888-0487

ROBERT T. BLOOMENTHAL
SANDRA FEINZIG BLOOMENTHAL

June 4, 2002

Mr. Kevin Norris
North Central Correctional Institution
500 Colony Road
P.O. Box 466
Gardner 01440

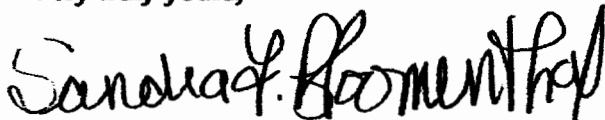
Dear Mr. Norris:

It was good speaking with you today and as I indicated to you, after reviewing your file, I see several issues that scream out at me. [REDACTED] Even though you are not excluded as to the donor of the semen found in the condoms, it lends credence to the fact that this was a consensual act and that this could appear to have been a group sexual experience.

The affidavit from [REDACTED] which you hold, together with the issues concerning the withholding of exculpatory evidence are also germane to your motion.

As per your request, I am enclosing copies of the article which appeared about me in Lawyers Weekly. Thank you.

Very truly yours,



Sandra F. Bloomenthal

SFB/vmd
Enclosures